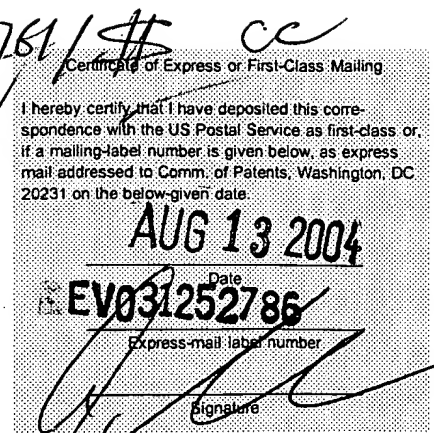


21509



IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor Wolfgang LUDWIG
Patent App. 09/808,398
Filed 14 March 2001
For METHOD OF AND APPARATUS FOR THE PROCESSING OF
 MEAT
Art Unit 1761
Hon. Commissioner of Patents
Box 1450
Alexandria, VA 22313-1450



Conf. No. 3668

Examiner Becker, D

APPEAL BRIEF UNDER 37 CFR 1.192

Now comes appellant, by his duly authorized attorney, the undersigned, and submits his Appeal Brief under the provisions of 37 CFR 1.192.

(1) REAL PARTY IN INTEREST

The real party in interest is Wolf-Tec Inc., a corporation located and doing business at 120 Kiefer Lane, Kingston, NY 12401, and assignee of this application by reason of an assignment recorded 11 July 2001 on Reel 011969, Frame 0017.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to appellant, the appellant's legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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(3) STATUS OF CLAIMS

Claims 1-10 and 12-16 have been canceled.

Claims 11 and 17-20 have been appealed.

(4) STATUS OF AMENDMENTS

This appeal is taken from rejection of 16 March 2004 which repeated in large measure a rejection of substantially the same claims in a Final Action of 23 October 2003. Appellant filed an Amendment After Final Action of 21 January 2004 and that Amendment After Final Action was refused entry in a communication of 17 February 2004. Appellant responded with a Request for Continued Examination and thereby gained entry of that amendment. This appeal treats the case following the RCE and entry of that Amendment After Final Action.

(5) SUMMARY OF THE INVENTION

The invention in this case relates to the treatment of meat. Normally the massaging of meat to incorporate a marinade and brine or other treatment liquids therein for a variety of purposes is carried out cold, i.e. the meat and the treating agents are chilled prior to the injection of the meat with the solution and the massaging of the meat to effect a bond between the muscle structure of the meat and the treating solution.

However, appellant has discovered that when the massaging of the meat in contact with the treating solution is carried out at

elevated temperatures, say temperature above 45°F, significant improvement can be obtained.

This approach is quite different from the approaches in the past and is to be distinguished on the one hand from the conventional cold treatment which operates well below 45°F and systems which may involve some cooking of the meat which involve temperatures well above the 60°F level which is the preferred upper limit.

When this application was originally filed, both method and apparatus were claimed. In response to a restriction requirement, the apparatus was selected here. However, a divisional application has been filed for the method and hence the method itself is not at issue except as it underscores the differences between the apparatus now claimed and what might be obvious from the prior art.

There are two groups of claims in the present case.

Claim 11 is directed to an apparatus which can be considered a massager for the meat, has a heater for passing a heated liquid through the jacket selectively, and has a particular temperature sensor which can pierce a body of meat in the massager.

Claims 17-20 are directed to a massager which has programming means for raising the temperature of the body of the meat in the massager while massaging the meat with a controlled torque of the rotary paddle.

The apparatus of claim 11 comprises a vessel (10), (page 11, lines 5-14) for receiving bodies of meat in contact with a

treating liquid (page 11, lines 7 and 8) for agitating the bodies of meat to distribute the treating liquid in them.

The vessel can be selectively heated or cooled (page 11, lines 21-25), utilizing jacket (20). A temperature sensor is positioned for direct contact with the bodies of meat (page 12, lines 1-8) and temperature sensor (22) (FIGS. 1 and 2). The temperature sensor has a plurality of sensing regions along the length thereof (page 13, lines 8-22) and FIGS. 3 and 4 for providing an average temperature of the body of meat pierced thereby.

With respect to claims 17-20, the apparatus comprises the vessel (10) for agitating the bodies of meat in the liquid, the rotary paddles (5) (page 11, lines 17-21) and the means for selectively heating and cooling the vessel (page 11, lines 21-26) and FIG. 1, (elements 21 and 22). The apparatus also includes programming means (18) for raising a temperature of the bodies of meat to a predetermined elevated temperature while massaging bodies with a controlled torque of the rotary paddle (page 11, lines 17-21).

(6) ISSUES

Claim 11 has been rejected on WO 96/36233 in view of HORN et al, BURKHART and DE 31 19 496A. The issue is whether the subject matter of claim 11 would have been obvious from this art at the time the invention was made, i.e. whether or not this rejection can stand.

Claims 17-20 have been rejected on WO 96/36233 in view of BURKHART and LUDWIG (and in the case of claims 19 and 20, further

in view of DE 31 19 496A). The issue is whether this rejection can stand.

(7) GROUPING OF CLAIMS

Claim 11 is grouped alone.

Claims 17-20 are grouped together and separately from claim 11. Claim 11 relies on features of the sensor for patentability and the sensor is not required by claim 17 although it is required by claims 19 and 20, while claims 17-20 rely on the programming feature which is not present in claim 11.

(8) ARGUMENT

Claim 11

Appellant assigns error to the rejection under 35 USC 103 in that the applied prior art collectively fails to show a heater for heating a liquid pass through a jacket of a vessel in which bodies of meat can be agitated in a liquid and a temperature sensor which can pierce the meat and has a plurality of sensing regions along a length thereof for providing an average temperature of the body of meat pierced thereby. The references applied by the Examiner disclose a massaging drum (WO 96/362233) but no jacket or heater.

The HORN et al reference which the Examiner has cited to show a jacket at 30, discloses a jacket in which a refrigerant can

be circulated during operation and no heater for the substance passed through the jacket.

The BURKHART reference relates to a temperature sensor which passes through a wall and is in no position to contact the bodies of meat and is provided in a cooking vessel, while DE 31 19 496 relates to a microwave thermometer also in a cooking application.

While the Examiner has engaged in a tortuous effort to justify combination of the four references, they are clearly mutually incompatible with HORN and WO 96/36233, being diametrically opposite to the invention with respect to chilling the meat during treatment and BURKHART and DE 31 19 694 being directed to cooking to meat.

There thus is nothing in the art which would render obvious a temperature sensor in direct contact with bodies of meat in the context of agitating them in a liquid and for heating a liquid which is passed through a jacket of a treatment vessel.

Claims 17-20

Appellant assigns error to the rejection under 35 USC 103 of these claims on the ground that the applied prior art does not disclose a paddle massager with programming means for raising a temperature of the bodies of meat in the massaging drum to a predetermined elevated temperature while massaging the bodies of meat with a controlled torque of the rotary paddle.

Both WO 96/36233 and BURKHART teach away from raising a temperature of bodies of meat in the massaging drum and rather require chilling of the meat.

The Examiner has cited LUDWIG, the prior work by the present applicant, as circulating a heat-transfer fluid through a jacket and controlling torque, but the Examiner does not say that the programming means in LUDWIG raises a temperature of the bodies of meat in the massaging drum for the reason that that is not disclosed by LUDWIG, is not found in the other references applied and is not even suggested in the art

Claims 18-20

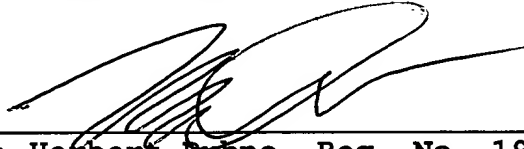
Claims 18-20 relate to the temperature sensor discussed in connection with claim 11 and which have been subject to a similar rejection. However, for the reasons set forth in claim 11, these claims are also deemed to be allowable.

CONCLUSION

For the reasons stated, claims 11 and 17-20 are deemed to be allowable and reversal of the rejection of these claims is requested.

This brief is submitted in triplicate original along with
a charge form in the amount of the appeal brief.

Respectfully submitted,
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Enclosures: Charge form for \$165 (Sm)
Appendix

(9) APPENDIX

The following claims are the claims involved in this Appeal.

1 11. An apparatus for processing meat which comprises:
2 a vessel for receiving bodies of meat in contact with a
3 treating liquid and for agitating said bodies of meat to distrib-
4 ute said treating liquid in said bodies of meat;
5 means for selectively heating and cooling said vessel
6 during the agitation of said bodies of meat therein ;
7 a jacket for said vessel, said means for selectively
8 heating and cooling said vessel comprising a refrigeration unit for
9 cooling a liquid and circulating the cooled liquid through said
10 jacket and a heater for heating a liquid and passing the heated
11 liquid through said jacket selectively; and
12 a temperature sensor positioned for direct contact with
13 bodies of meat in said vessel and operatively connected to said
14 means for selectively heating and cooling said vessel for control-
15 ling a temperature of said vessel during the agitation of said
16 bodies of meat therein, said temperature sensor being provided with
17 a member capable of being thrust into said vessel to pierce a body
18 of meat therein, said member having a plurality of sensing regions
19 along a length thereof for providing an average temperature of the
20 body of meat pierced thereby.

1 17. An apparatus for processing meat which comprises:
2 a vessel for receiving bodies of meat in contact with a
3 treating liquid and for agitating said bodies of meat to distrib-
4 ute said treating liquid in said bodies of meat; and
5 means for selectively heating and cooling said vessel
6 during the agitation of said bodies of meat therein, said vessel
7 being a massager having a massaging drum formed with a temperature
8 control jacket and a rotary paddle in said drum, said means for
9 selectively heating and cooling said vessel including means for
10 selectively circulating a heated and a cooled liquid through said
11 jacket, said apparatus further comprising programming means for
12 raising a temperature of said bodies of meat in said massaging drum
13 to a predetermined elevated temperature while massaging said bodies
14 of meat with a controlled torque of said rotary paddle.

1 18. The apparatus defined in claim 17, further compris-
2 ing a temperature sensor positioned for direct contact with bodies
3 of meat in said massaging drum and operatively connected to said
4 means for selectively circulating said heated and a cooled liquid
5 through said jacket for controlling a temperature of said massag-
6 ing drum during the agitation of said bodies of meat therein.

1 19. The apparatus defined in claim 18 wherein said
2 temperature sensor extends through a wall of said massaging drum
3 and is thermally insulated therefrom to respond directly to a
4 surface temperature of bodies of meat in said massaging drum.

1 20. The apparatus defined in claim 18 wherein said
2 temperature sensor is provided with a member capable of being
3 thrust into an interior of said massaging drum to pierce a body of
4 meat therein.